# No. 12,424

IN THE

# United States Court of Appeals

## For the Ninth Circuit

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VINCENT HALLINAN,
*Appellant,*

vs.

UNITED STATES OF AMERICA,
*Appellee.*

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## BRIEF FOR APPELLEE.

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### JURISDICTIONAL STATEMENT.

(a) The United States District Court for the Northern District of California had juridsiction over the appellant and power to punish him summarily for contempt committed in the presence of the Court under Section 401, Title 18, United States Code and Rule 42(a) F.R. Crim. P.

(b) The statutory provisions and the rule involved are as follows:

Chapter 21 of Title 18, United States Code provides:

§401. *Power of Court.*

A court of the United States shall have power to punish by fine or imprisonment, at its discre-

tion, such contempt of its authority, and none other, as—

(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) Misbehavior of any of its officers in their official transactions;

(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

§402. *Contempts Constituting Crimes.*

Any person, corporation or association willfully disobeying any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of the District of Columbia, by doing any act or thing therein, or thereby forbidden, if the act or thing so done be of such character as to constitute also a criminal offense under any statute of the United States or under the laws of any State in which the act was committed, shall be prosecuted for such contempt as provided in section 3691 of this title and shall be punished by fine or imprisonment, or both.

Such fine shall be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may, where more than one is so damaged, be divided or apportioned among them as the Court may direct, but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of $1,000, nor shall such imprisonment exceed the term of six months.

This section shall not be construed to relate to contempts committed in the presence of the

Court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but the same, and all other cases of contempt not specifically embraced in this section may be punished in conformity to the prevailing usages at law.

Rule 42, Federal Rules of Criminal Procedure, provides:

(a) *Summary Disposition.* A criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the Court. The order of contempt shall recite the facts and shall be signed by the judge and entered of record.

(b) *Disposition upon Notice and Hearing.* A criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open Court in the presence of the defendant or, on application of the United States attorney or of an attorney appointed by the Court for that purpose, by an order to show cause or an order of arrest. The defendant is entitled to a trial by jury in any case in which an act of Congress so provides. He is

entitled to admission to bail as provided in these rules. If the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial or hearing except with the defendant's consent. Upon a verdict or finding of guilt the Court shall enter an order fixing the punishment.

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## STATEMENT OF THE CASE.

This is an appeal from an order entered on November 22, 1949, in the United States District Court for the Northern District of California adjudging the appellant Hallinan guilty of contempt and sentencing him to six months imprisonment. The judgment was accompanied by a certificate dated November 22, 1949, and signed by United States District Judge George B. Harris, certifying that the conduct for which the appellant was being punished was committed in the presence of and was seen and heard by said judge during the sessions of the United States District Court for the Northern District of California. The certificate specifies the facts which constituted the contempt by the appellant through the means of incorporating by reference and attaching certain parts of the transcript in the case of *United States v. Harry R. Bridges, et al.*, in which the District Judge made an oral recitation of the factual events constituting contempt by the appellant. (R. 50-68.)[1]

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[1]Appellee here adopts the method used by appellant in referring to the record. Pages in Volume I are designated by the letter R; pages in Volumes II, III, and IV are designated by the letters Tr.

## SUMMARY OF THE FACTS.

### (a) Brief chronology of events.

Appellant Hallinan was counsel for Harry Bridges, a defendant in the case of *United States v. Bridges, et al.*,[2] which went to trial on November 14, 1949, before Judge George B. Harris in the United States District Court for the Northern District of California. (Tr. 1.) On the afternoon of Thursday, November 17, appellant began his opening statement. (Tr. 489.) After the jury had retired the Government protested against appellant's tactics and the Court, after considerable argument by appellant and other counsel on both sides, made certain rulings pertaining to the issues involved in the case and the scope and character of permissible statement to the jury. (Tr. 511-541.) The next morning appellant continued his opening statement in such a manner as to invoke continuous objection and necessitate frequent admonitions by the Court to the jury and to the appellant. (Tr. 545-586.) On the afternoon of Monday, November 21, appellant cross-examined the first government witness, and persistently sought to inquire into matters which the Court previously had ruled were not relevant to the issues in the case. (Tr. 700-759.) After the jury was dismissed for the day, there followed a brief colloquy between Court and counsel at the end of which the Court told appellant, "I have tried to make the ruling, but unfortunately you have seen fit to depart from them, consistently and persistently. I think we will meet at 9:30 and discuss the matter." (Tr. 772.)

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[2]The opinion of the District Court as to certain issues of law raised by the pleadings in that case appears in 86 F. Supp. 922.

On Tuesday, November 22 at 9:30 A.M. the Court met with counsel, including appellant, in the absence of the jury, at which time the Court made the following statement:

> In this matter there are several phases to be referred to. Particularly the Court has been concerned about the events of recent days, and in particular I refer to the course of conduct of Mr. Vincent Hallinan representing the defendant, Mr. Harry Bridges. The record of events which I am about to refer to presents a series of acts of misbehavior on the part of Vincent Hallinan which if allowed to continue without comment on my part or official judicial action, might well disrupt the orderly processes of this trial. * * * In addition, Mr. Vincent Hallinan, by his studied persistent and inflammatory course of conduct in flouting the authority and orders of the Court has attempted to impair the effectiveness of this Court as an instrument of the judicial process. That he was wilfully attempting to evade the rulings and orders of the Court is manifest from the record of the proceedings of the trial, all of which occurred in my presence.
>
> Yesterday afternoon, Monday, November 21st, it became quite apparent to the Court that Vincent Hallinan would, unless prevented by prompt and firm judicial action run unbridled and roughshod in the further progress of this trial. I was prompted then and there to make the order and findings which I am now about to make. However, to the end that I review coldly and dispassionately the transcript in the more pleasant environment of my chambers rather than attempt

preciptous conduct, I read and reread and studied the transcript of the Court's proceedings from the very inception of the trial until the close of the proceedings, and I so read until the very early morning hours.

As I read and continued to read, coldly, dispassionately, my path became clearer and the course of my judicial conduct became manifest. The primary obligation imposed upon this Court or any Court worthy of the name is to maintain the orderly processes of the law and the due and proper administration of justice. These federal Courts represent a bulwark of our democracy and respect for them must be maintained by the judicial officers charged with that responsibility. I say to you, Mr. Hallinan, long after the case of *United States v. Harry Bridges* has become judicial history, long after this Court has gone to whatever happy reward judges may have, these Courts will remain as beacons in our judicial system, wherein, we hope, expect and pray that the rights of men may be adjudicated without regard for station in life or race, color or creed.

However, there is an anomaly apparent throughout the country today and exemplified, perhaps, in some of our more recent trials, in that those who cry so earnestly for protection under the mantle and cloak of our Constitution of the United States would at the same time destroy and seek to destroy every vestige of decency and judicial goodness and sanctity inherent in the federal judicial system. If I permitted this matter to go on unheeded, it would, in my opinion, represent a tragic commentary on our system, orderly

> as it is, in the administration of justice. My present task is not a pleasant one, and I approach it with a degree of care and a detached judicial aloofness.
>
> Accordingly, to the end that there shall be no mistake hereafter in the record concerning my views and the conclusions I reach, I shall review the record as the basis for an order and certificate of contempt required under Title 18, Section 401, paragraph 1. (Tr. 773-775.)

The Court then orally recounted the events which it charged constituted contempt and appellant was afforded an opportunity to express his view of the Court's action (Tr. 776-809, 810-816, 838-848) and that afternoon the Court formally adjudged appellant to be guilty of contempt of Court and sentenced him to six months imprisonment and ordered that appellant's name be stricken from the rolls of lawyers of the Federal Court for the Northern District of California, Southern Division. (Tr. 847-848.) Thereafter the Court engaged in discussion with counsel and the defendant Bridges as to what course should be pursued with respect to appellant's continuance in the case as counsel and finally granted appellant a stay of execution until the completion of the trial. (Tr. 848-871.) In connection with the stay of execution the Court said: "Automatically, by granting the stay of execution of judgment and sentence, Mr. Hallinan is restored to all rights of this Court as practitioner, counselor and solicitor. How else could he practice before this Court if I did not set aside that part of the order." (Tr. 871.)

**(b) The certificate.**

The Court recited the events which had occurred during the course of the opening statement and examination of the first witness which constituted misconduct by appellant. (Tr. 776-809.) This recitation was included in the Court's certificate in conformity with Rule 42(a) F.R. Crim. P. by reference, a copy of that part of the transcript being annexed to and made a part of the certificate. (R. 51-68.)[3]

At the outset of the recitation of events the Court said:

> Adverting to the proceedings on Thursady, November 17, 1949, it became apparent to the Court that defense counsel, Vincent Hallinan, was not making an opening statement in any judicial sense, but was using it as a medium and sounding board for dragging in before the jury irrelevant, incompetent and inflammatory matter, with the studied and avowed purpose of prejudicing this prosecution in the light of events, incidents and characters, having no place in the proceeding before the jury. Hopeful that I might define the responsibilities of counsel both for prosecution and defense and the Court, we engaged in a lengthy discussion in the absence of the jury, attempting to avoid any further conduct on Mr. Hallinan's part in the future to the end that the trial proceed in an orderly judicial fashion. (Tr. 776-777.)

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[3]The copy of the certificate contained in Vol. I of the record which was furnished to appellee is marked pp. 51-68, but only p. 51 is contained in the record. Therefore, the citations are to Volume and Page of the transcript rather than to pages of the certificate.

The certificate, through the recitation of events incorporated therein by reference, first relates the rulings which were made on the objections raised by the Government to appellant's opening remarks on the afternoon of November 17, 1949. It points out that the Court told appellant that his remarks were "creating an atmospheric quantity at this stage designed to prejudice and inflame the jury" (Tr. 777), that the previous administrative matters concerning the defendant Bridges were "moot, irrelevant and immaterial" and that any reference thereto would "tend to prejudice rather than clarify the issue" (Tr. 778), and that it would sustain objections to inflammatory remarks concerning the existence of a conspiracy against the defendant Bridges by possible government witnesses. (Tr. 779.) It next relates that on the following morning the Court took ten or fifteen minutes to caution the jury as to the province of an opening statement (Tr. 780) and then cites instances in which appellant indulged in remarks violative of the Court's previous rulings concerning the scope and character of the opening statement. It states that appellant soon "lapsed into a violation of orders" referring to an incident described on page 550 of the transcript where objection was sustained to comments upon previous accusations that the defendant Bridges was a member of the Communist Party under the name of Harry Dorgan, and to another occasion set forth on page 554 of the transcript where objection was sustained because of appellant's discourse upon internal warfare between rival labor organizations in which the de-

fendant Bridges was involved. (Tr. 781-782.) The Court then sets forth a passage taken from the transcript at page 555 in which appellant made a violent attack upon the reputation of a man whom he supposed would be a witness in the case calling him "a typical bucko mate, with a reputation for violence and ferocity as wide as the Seven Seas, a man who has been arrested for brawling and assault in half the Ports of the world," and which necessitated an admonition by the Court. (Tr. 782-783.) It then relates that a few minutes later "Mr. Hallinan again lunged or launched into the same demeanor, same conduct, persistent, studied as it was" (Tr. 783) referring to the statements of appellant appearing at page 558 of the transcript. The certificate quotes an objectionable discourse by appellant upon previous deportation proceedings against the defendant Bridges and in which appellant said "The United States House of Representatives passed against Harry Bridges the only bill of attainder ever passed in the United States". (Tr. 784.) It is certified that almost immediately appellant accused government agents with having tapped the defendant Bridges' telephone wires in 1937 and that as a result the Court was required to caution the jury to disregard the statement. (Tr. 786-787.) The Court then set forth the text of appellant's remarks about the alleged mistress of a man named Lundeberg which prompted the Court to advise appellant that "This is not an opening statement either traditionally or in any concept that I have ever heard of" and that an opening statement "is not a

sounding board wherein you may give vent to the external and immaterial matters that have existed over a period of many many years." (Tr. 788-789.) Reference is then made to page 569 of the transcript where the Court found it necessary to admonish appellant for a wholesale characterization in vile terms of all government witnesses as perjurers and low people. (Tr. 790.) At this point the Court indicated that its patience was being exhausted. It is pointed out that shortly thereafter appellant made slighting remarks relative to the activities of the F.B.I. in connection with Bridges. (Tr. 791.) The next reference is to page 574 of the transcript which sets forth appellant's argument to the Court in the presence of the jury that he should be permitted to attack the credibility of unnamed and unknown witnesses. (Tr. 791.) The certificate sets forth verbatim appellant's statement that the defendant Bridges refused to accept $50,000 in 1934 "to throw" a strike, and points out that the Court was forced to caution the jury to disregard that statement. (Tr. 792.) Next, the certificate relates that the Court sustained an objection to appellant's discourse upon labor troubles in Hawaii which appears in the transcript at page 580 (Tr. 792) and that shortly thereafter upon objection by the government that appellant was making an argument (see page 582 of the Transcript) the Court was again required to admonish the jury to disregard appellant's statements. (Tr. 793.)

The certificate points out that on two occasions appellant was disrespectful. Once when the Court asked

him if he had the benefit of assistance from associate counsel to which he replied "Yes—who made the motions Your Honor treated with contempt" (Tr. 778), and again when he referred to the Assistant United States Attorney, Mr. Robert McMillan, as "some little pest." (Tr. 785.)

The Court next took up appellant's conduct with respect to his cross-examination of the first government witness on the preceding afternoon. It was first pointed out that on direct examination the witness had testified that he had been employed by the Bureau of Immigration in San Francisco from April 1941 until April 1948, and that appellant pursued "the same tactics, the same studied performance, the same desire to introduce irrelevant, incompetent and inflammatory matter before the jury." (Tr. 793.) The certificate relates that "Mr. Hallinan had launched into a dissertation upon the deportation proceedings" and that the Court despite its previous rulings found it necessary to reiterate "that there is no issue with respect to the deportation proceedings before this Court, there is no issue upon which the Supreme Court decision would be controlling as a matter of fact or as a matter of law." (Tr. 794.) The Court found that "there is a complete lack of good faith, fair dealing on Mr. Hallinan's part in attempting to lug in or haul by the ears the Supreme Court decision or Mr. Landis' decision" since neither the defendants Schmidt nor Robertson was involved in the prior proceedings. (Tr. 795-796.) Reference is made to appellant's argument to the Court upon the admissibility of evidence pertain-

ing to the Supreme Court decision, Mr. Landis' decision and wire tapping which is found in the transcript at pages 728-730 and the Court's ruling on such matters. (Tr. 797.) The certificate then refers to page 734 of the transcript and repeats Mr. Hallinan's question asking the witness whether he had read the portion of the Supreme Court decision which charged federal agents with "illegal wire tapping of Harry Bridges" and the Court's caution to the jury "to disregard any implications in the question." (Tr. 798.) Reference is made to pages 737-738 of the transcript where appellant continued to inquire of the witness about alleged wire-tapping episodes, and was informed indirectly that his actions might result in his being cited for contempt. (Tr. 798-799A.) The Court certified that "the Court's admonition was still echoing" when appellant asked the witness whether he had been informed by any federal official that Bridges' wires were being tapped and followed by asking the witness whether he had ever made any protest about the wire-tapping of Harry Bridges and whether he had told any government official that he would not be a party to an illegal effort to injure Bridges. Objections to each question were sustained. (Tr. 800-801.) The certificate next sets forth a question by appellant in which he asked the witness whether he learned from a study of the Landis decision that Landis had rejected all 62 government witnesses as liars and perjurers and the statement by the Court that the question "is an attempt to circumvent the ruling of this Court and place before the jury by indirection mat-

ters that have been ruled out, matters that are immaterial and that are irrelevant," which brought a response from appellant that "we have had no ruling upon any such question as that." (Tr. 801-802.) The Court found that the questions were not asked in good faith, were an attempt to besmirch witnesses in advance and inquire into prior deportation proceedings. It found that "the questions, the manner, and the decorum" represented, in the opinion of the Court, a studied plan to destroy in advance the effectiveness and the asserted truthfulness of the witness placed upon the stand by the bland assertion that somewhere, sometime, he might have been associated with an alleged conspiracy, which, of course, Mr. Hallinan has referred to as somewhat fantastic. (Tr. 803.) Reference is made to a question appearing on page 748 of the transcript where appellant again asked the witness whether prior to the 1939 deportation proceedings he had personally had "anything to do with installing a wire-tapping device in Harry Bridges' room in the Hotel Multnomah in Portland" and which resulted in protest by the government counsel on the ground that it dealt with matters prior to witness' government service. (Tr. 804-805.) The certificate states that appellant continued asking the witness about alleged wire-tapping of Harry Bridges' telephone, this time laying the events in New York City in 1941, and that the Court found these questions to constitute "a persistent, studied continuity of conduct, not bordering on contempt, but contemptuous in every form and degree." (Tr. 806.)

**(c) The facts underlying the certificate.**

At the outset of his opening statement appellant stated that this was the fifth inquiry into the subject before the jury (Tr. 490) undertook a discourse on Bridges' labor activities (Tr. 502-503) charged that various persons engaged in a conspiracy to destroy Harry Bridges (Tr. 504-510) and referred to administrative proceedings designed to inquire into Bridges' deportation. (Tr. 508, 505.) At the end of the daily session the government protested against appellant's tactics (Tr. 511-513), and the Court entertained argument designed to ascertain the scope of permissible statements to the jury. (Tr. 513.) During the course of that argument the Court ruled that prior deportation issues were irrelevant to the issues involved in the case at bar (Tr. 513, 516, 531), that Bridges' waterfront labor activities were immaterial to the issues in the case (Tr. 516), that reference to trade union, waterfront and employer-employee relations was improper (Tr. 516-517), and that in characterizing all of the government witnesses, whoever they might be, as members of a conspiracy to destroy Bridges was indulging "in speculation on speculation" and creating "an atmospheric quantity" designed to prejudice and inflame the jury in connection with any sage, considered judgment they may have on evidentiary matters. (Tr. 528-529.) The Court specifically stated that he held the administrative matters to be moot, irrelevant and immaterial, but that appellant could refer to the transcript for purposes of impeachment and that any reference to them at this point would tend to prejudice the issue. (Tr. 531.) The Court also made it clear

that he would sustain objections to inflammatory speech relative to a conspiracy to convict Bridges of a crime by means of perjury. (Tr. 535.)

The next morning the Court stated to the jury the function of an opening statement. (Tr. 541-545.) When Mr. Hallinan resumed his opening statement he immediately characterized all future government witnesses as "liars and perjurers" (Tr. 546) and launched into a discussion of prior accusations by rival union adherents that Bridges was a Communist, informing the jury that such accusations were founded upon manufactured evidence and discovered to be untrue. (Tr. 547, 548-550.) The jury was admonished and appellant was advised to keep his statement within the bounds of the issues involved and not to indulge in blanket assertions to discredit all the witnesses produced by the government in one fell swoop. (Tr. 551.) Appellant immediately continued his statement relative to union disputes between Bridges' union and the A.F. of L. and Bridges' difficulties in that respect. (Tr. 553-554.) An objection was sustained but appellant continued the same discussion (Tr. 554) to which another objection was sustained. (Tr. 555.) Appellant immediately continued his statement with inflammatory attacks upon the character of a rival union leader (Tr. 555), making it necessary for the Court to explain to the jury that appellant's statements were argumentative and not proper at that time and to admonish appellant that "the excoriations and vituperative matter bearing upon Mr. Lundeberg and others has no place at the present time" (Tr. 556)

and to advise him that he was going far afield from any opening statement. (Tr. 557.) Despite this admonition appellant continued to attack the character of other named labor leaders, stating that those persons engendered such a hatred and animosity for Harry Bridges that they groomed and instructed witnesses who would later appear and that they had sent two men to murder Bridges. (Tr. 558-560.)

Next appellant began an attack upon government officials saying Bridges' enemies had enlisted them in their activities. (Tr. 560.) Objection was again sustained (Tr. 561) and appellant then stated that "as early as 1936 they caused a warrant for Bridges' arrest on a deportation inquiry to be issued" and that "the U.S. House of Representatives passed as against Harry Bridges the only bill of attainder ever passed in the United States." This invoked a protest by the prosecutors and appellant turned to an attack upon their personalities (Tr. 562), making it necessary for the Court again to admonish him not to indulge himself in such characterizations. (Tr. 562-563.) Appellant persisted in stating that Government officials tapped Bridges' telephone in Seattle in 1937 and that it was a matter of public record. (Tr. 565.) This outburst again elicited an objection which was sustained, appellant indulging in strong argument to the Court. (Tr. 566.) Appellant immediately reverted to vituperative statements concerning a lady secretary employed by Bridges (Tr. 566) which elicited comment from the Court that "this is not an opening statement, Mr. Hallinan, either traditionally or in any concept that I

have ever heard of", and a clear statement that appellant was going beyond proper bounds in his speech to the jury. (Tr. 567.) At this point appellant, in addressing the Court in the presence of the jury, made reference to that day's newspaper headlines concerning the trial (Tr. 567) which brought strong admonition from the Court. (Tr. 568.)

Thereafter, appellant resorted to making an argument to the jury again to the effect that Bridges knew he was being spied upon and investigated, and would therefore not have committed perjury had he been a member of the Communist Party. (Tr. 569-570.) Immediately after the recess appellant began his address to the jury with the statement that Bridges was spied upon and shadowed by the F.B.I. (Tr. 571) and after the objection was sustained continued in the same vein. (Tr. 572.) After he was again admonished appellant returned to a vituperative and inflammatory attack upon certain persons whom he said the government would produce as witnesses against Bridges. (Tr. 573.) When the prosecution objected, appellant argued to the Court in the jury's presence that the defense knew who the government witnesses would be and accused the prosecution of wanting "to sort of write out an opening statement for the defense." (Tr. 574.) Thereafter, appellant continued with a statement that was argumentative in nature necessitating frequent objections by government counsel. (Tr. 575-579.) This culminated in a statement by appellant that the conspiracy against Bridges flowered anew because of the longshoremen's strike in Hawaii and that the

purpose of the prosecution was to break that strike (Tr. 579-580) and ended by returning to an inflammatory and prejudicial characterization of all prospective government witnesses as "hired informers, spies, turncoats; the very swill of humanity", and ex-Communists who will swear any man's life away in order to pick up a few honest dollars of government treasury compensation testifying against Communists, labor leaders and school teachers. (Tr. 581-582.)

On the afternoon of Monday, November 21, 1949, appellant began his cross-examination of the government's first witness. (Tr. 702.) Appellant asked the witness whether it was his duty to keep abreast of the current decisions of the Supreme and Circuit Courts of Appeal relating to immigration matters. The Court promptly ruled that "there is no issue with respect to the deportation proceedings before this court, there is no issue upon which the Supreme Court's decision would be controlling as a matter of fact or as a matter of law." (Tr. 705.) Despite this ruling two questions later appellant asked the witness when he had read the parts of the Supreme Court decision and persisted in arguing the matter at length after objection was sustained. (Tr. 706-734.) During the course of this argument appellant stated that he desired to inquire of the witness to show he was cognizant of wire-tapping, illegal invasions of this man's privacy, that he was part of it, that he either actively participated in it or did nothing to stop it and argued that point to the Court. (Tr. 724-730.) The Court ruled that "these matters of prior consequence had no legal bearing

upon this matter" and made it clear that the defense could not inquire into the matters under discussion (Tr. 730-731) to which appellant rejoined that "I will have to continue to ask such questions to build a record and ask such questions as I may deem advised." (Tr. 733.)

After the jury returned, the appellant's first question was "Now Mr. Garner, I suppose it would be a fair conclusion that if you did not read all of the decision of the Supreme Court, at least you read most of it, is that right?" Objection was sustained. (Tr. 734.) Appellant's next question was, "Now, did you read that portion of the decision of the Supreme Court of the United States which charged the federal agents with illegal wire-tapping of Harry Bridges?" The Court thereupon admonished appellant that "the objection is sustained, that it is not in conformity with the ruling, Mr. Hallinan, and is an attempt to bring before the jury matters in obviation of my ruling. I admonish the jury to disregard any implications in the question." (Tr. 734-735.) Appellant was permitted, however, to ask the witness whether he had any knowledge or information with respect to wire-tapping by government employees or agents in the instant case and received a reply that the witness had no such information or knowledge. (Tr. 735-737.) Appellant then asked "You do have information that the government indulged in illegal wire-tapping upon the two previous deportation proceedings, do you not?" (Tr. 737-738.) Government counsel objected complaining that appellant's actions constituted contempt and the

Court sustained the objection stating, "The jury is admonished to disregard any implications contained in the question." At the same time, the Court further admonished appellant saying "and I say to you, Mr. Hallinan, your persistent conduct along this line, studied as it appears to be, may well eventuate in the situation that counsel refers to." (Tr. 738.) Appellant persisted by asking in the next question "Did you yourself, in the period preceding, that is, looking toward, the deportation of Harry Bridges, and during that time—not at the present—receive any information from any federal officer or agency that Harry Bridges' wires were being illegally tapped?" When objection was sustained appellant asked "Have you at any time throughout the origin of the proceedings against Harry Bridges, that is back in 1937 or '8 up to the present time, that is, up to today, made any protest of any kind to any agent of the government or any attorney of the government that there was or had been illegal wire-tapping of Harry Bridges?" Objection was again sustained. (Tr. 739.)

Appellant next asked "In your study, whatever study you did make of the Landis decision, you learned that 62 witnesses had been presented by the government against Harry Bridges and that Dean Landis had rejected all of them as liars and perjurers, didn't you find this out?" In sustaining an objection the Court said "It is an attempt to circumvent the ruling of this Court and place before this jury by indirection, matters that have been ruled out, matters that are immaterial, that are irrelevant." (Tr. 740-

741.) After a brief colloquy between Court and appellant, he again asked "Now getting away from these two proceedings that seem to involve me in so much criticism, do you know this, that 60 witnesses, different from those that testified before Landis, testified before Sears and that Sears rejected all but one of them as liars and perjurers, isn't that right, Mr. Witness?" (Tr. 741.)

Appellant turned to other matters for a short period and then returned to the subject of wire-tapping, asking "Prior to the deportation proceedings which were tried in 1939 before Dean M. Landis, did you personally have anything to do with installing a wire-tapping device in Harry Bridges' room in the Hotel Multnomah in Portland?" Objection was sustained and appellant inquired "Did you personally in the year 1941 have any part, or did you participate in any wire-tapping of a telephone in Harry Bridges' room in the hotel in New York City?" Objection was again sustained and appellant followed by asking "Did you personally have any contact with any persons, employees of the United States Government engaged in tapping of telephone wires of Harry Bridges in a hotel in New York in 1941?" (Tr. 749-750.)

Later, on recross-examination of the same witness appellant again sought to examine the witness with reference to his knowledge of the opinion of the Supreme Court in *Bridges v. Wixon* and the opinion of Landis in the 1939 deportation proceedings of Harry Bridges, stating that he wished to accomplish this by reading selected portions of those opinions to the witness and

inquiring whether he had read those parts. (Tr. 753-757.) The jury was dismissed for the day shortly afterward (Tr. 769) and there followed a brief colloquy which has been set forth above in part (a). (Tr. 772.)

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**ARGUMENT.**

Appellant was adjudged guilty of contempt because his conduct was such as to disrupt the orderly processes of the law and prevent the due and proper administration of justice.[4] Shortly after the foundation of this republic the Supreme Court decided "that courts of justice are universally acknowledged to be vested, by their very creation, with the power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates, and, as a corollary to this proposition, to preserve themselves and their officers from the approach and insults of pollution." *Anderson v. Dunn,* 6 Wheat. 204, 227. Thus the power to punish for contempt is inherent in all courts since the existence of such power is essential for the preservation of order in judicial proceedings and federal courts have been invested with such jurisdiction since the moment of their creation. *United States v. Hudson,* 7 Cranch 32, 11 U.S. 21; *Ex Parte Robinson,* 86 U.S. 505, 510.

Appellant has been adjudged guilty of contempt because he consistently and wilfully embarked upon a course of conduct which denied the authority of the

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[4]Tr. 773-775.

United States District Court—which authority must be vigorously preserved if the Court is to function free from disruption and with public confidence in the unhampered administration of justice.

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## I.

### THE POWER TO PUNISH APPELLANT SUMMARILY FOR HIS MISCONDUCT IN OPEN COURT IN THE PRESENCE OF THE JUDGE CONTINUED ON THE MORNING OF NOVEMBER 22, 1949.

Appellant contends that, because the contempt proceedings were not set in motion until the morning after the last of the acts of misconduct occurred, the Court lacked jurisdiction to punish summarily under Rule 42(a) F.R. Crim. P. He argues that the power to proceed summarily is limited solely to situation where *immediate* action is necessary to protect the Court's official dignity and that in the instant case the Court's action was taken to prevent *future* disruption of the judicial process. (Br. pp. 62-66.)

#### A. The practical problem.

Where, as here, the acts of contempt interfere with the Court's duty of conducting a trial in an impartial and orderly manner, the judge is confronted with the necessity of enforcing discipline without undue delay to the proceedings at hand. The rights of the litigants are involved and they should not be harmed by the capricious acts of the contemnor. If it were necessary to proceed against appellant in the manner described in Rule 42(b) F.R. Crim. P., the trial of the

cause would be interrupted for a considerable period with attendant inconvenience and expense to the members of the jury, witnesses, defendant, prosecution, and the Court, because under that section it would be necessary to refer the matter to another judge, give the contemnor notice of the charges, hold a hearing, await a decision and possibly an appeal therefrom. In as much as the Court had complete knowledge of all the facts involved, such a delay would serve no useful judicial purpose and would only further impair the administration of justice. That such considerations were here involved is apparent from the record, which shows that after mature reflection the Court reluctantly stayed execution of its sentence and permitted appellant to continue as counsel in the case rather than to delay the trial for several days or weeks and require the defendant Bridges to proceed with an attorney who might be unfamiliar with the facts in the case.

It is submitted that this very situation, affecting as it does, not only the power and dignity of the Court but the rights and interests of persons other than the contemnor, is one of the compelling reasons permitting the imposition of summary punishment where the Court has personally witnessed the contemptuous acts committed in open court. The summary power exists for the purpose of enforcing obedience and decorum without undue interruption to the business pending before the Court. *In re Cary,* 165 Minn. 203, 206 N.W. 402.

**B. The Contempt Statutes and Federal Rules of Criminal Procedure.**

The power of a Court to punish summarily stems from Section 401, Title 18, United States Code,[5] which provides:

> A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority and none other, as,
>
> (1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
>
> (2) Misbehavior of any of its officers in their official transactions;
>
> (3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

It will be perceived that the foregoing section does not prescribe the procedure under which the power shall be exercised. Section 402, Title 18, United States Code, after setting forth the procedure with respect to indirect contempts specifically states that such procedure shall have no application in cases of misbehavior, as in the instant case, in the presence of the Court. Such contempt said Congress "may be punished in conformity to the prevailing usages at law."

The Federal Rules of Criminal Procedure promulgated by the Supreme Court and approved by the Congress contain a statement of the general procedure

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[5]This section was derived from the Act of Mar. 2, 1831 (4 Stat. 487). The history of the statute is summarized in *Nye v. U.S.*, 313 U.S. 33, 45-48.

to be followed in cases of direct contempt. Rule 42(a) permits summary punishment of a criminal contempt "if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the Court." The Advisory Committee's note to Rule 42(a) does not say, as appellant contends (Br. p. 63), that it was intended to follow the suggestions in *Cooke v. U. S.*, 267 U.S. 517, but merely state that the rule "is substantially a restatement of existing law" and cite *Ex parte Terry,* 128 U.S. 289 and the *Cooke* case.

It is significant that neither the statute nor Rule 42(a) contains a specific limitation as to the time in which a Court may act summarily to punish a contempt. Since the rule is but a restatement of existing law it is reasonable to suppose that if the Court was of the opinion that the existing judicial precedents limited the exercise of the power as to time or situations where *instant* action was a necessity it would have so stated in the rule.

**C. The decided cases.**

The decided cases make it clear that the *sine qua non* of the power to punish summarily is the fact that the misbehavior giving rise to the punishment was committed in the face of the Court and that jurisdiction over the offender attaches at the instant the contempt is committed. It is the personal witnessing of the contemptuous conduct which gives rise to summary jurisdiction. *Ex parte Terry,* 128 U.S. 289 makes this clear. The Court there said, p. 311:

> Jurisdiction of the person of the petitioner attached instantly upon the contempt being committed in the presence of the court. That jurisdiction was neither surrendered nor lost by delay on the part of the Circuit Court in exercising its power to proceed, without notice and proof, and upon its own view of what occurred to immediate punishment.

In *Cooke v. U. S.*, 267 U.S. 517, the Supreme Court again recognized the difference between contempts committed in open Court and there observed by the Court itself and contemptuous acts committed nearby which were not heard or seen by the judge. In speaking of the former it said, p. 534:

> To preserve order in the Court for the proper conduct of business, the Court must act instantly to suppress disturbances or violence or physical obstruction or disrespect to the Court when occurring in open Court. There is no need of evidence or assistance of counsel before punishment because the Court has seen the offense. Such summary vindication of the Court's dignity and authority is necessary. It has always been so at common law and the punishment imposed is due process of law. Such a case had great consideration in *Ex parte Terry,* 128 U.S. 289. It was there held that a court of the United States upon the commission of a contempt in open court might upon its own knowledge of the facts without further proof, without issue or trial and without hearing an explanation of the motives of the offender, immediately proceed to determine whether the facts justified punishment and to inflict such punishment as was fitting under the law.

It should be noted that in the *Cooke* case the acts constituting the contempt were not committed in the face of the Court and that the Court decided that under such circumstances imposition of summary punishment was improper.

This Court has previously decided in a case similar to the one at bar that the trial Court may inflict summary punishment for direct contempt the day following the commission of the contemptuous act. *In re Maury,* 205 Fed. 626, 631, (C.A. 9). There the act was committed during the course of the opening statement to the jury, at which time Maury was admonished by the Court, but the plaintiff in error was not called before the Court and fined until the jury retired. This occurred on the afternoon of the next day. The Court referred to the language appearing in *Ex parte Terry,* and said, p. 632:

> We are of the opinion that the rule laid down in the case of Terry is entirely applicable to the case before this Court. Obviously there can be no distinction between delaying until the next day before making an order adjudging an offender guilty of contempt of court; *jurisdiction of the person of the offender having attached instantly upon the contempt having been committed in the presence of the court.* (Italics supplied)

California State Courts have adhered to this view, *In re Grossman,* 109 Cal. App. 625, 631-632; 293 Pac. 683, 685-686; as have Washington, *In re Willis,* 94 Wash. 180, 184-185; 162 Pac. 38, 39-40; Minnesota, *In re Cary,* 165 Minn. 203, 206 N.W. 402; and Con-

necticut, *Middlebrook v. State,* 43 Conn. 257. The latter case was quoted at length with approval by the Supreme Court in the *Terry* case, (see 128 U.S. at p. 312).

Within the past eight years the Court of Appeals for the 8th Circuit has adopted the rule of the *Maury* case, stating that jurisdiction to punish for direct contempt continues until the trial of the suit is terminated. *O'Malley v. U. S.,* 128 Fed. 676, 684, (C.A. 8), reversed on another ground sub. nom. *Pendergast v. U. S.,* 317 U.S. 412.[6] Punishment of direct contempts by summary proceedings at a time not immediately subsequent to the commission of the misconduct has been approved by other Courts without discussion of the question involved here. *U. S. v. Hall,* 176 F. (2d) 163; *White v. George,* 195 Ga. 465, 24 S.E. (2d) 787; *Coons v. State,* 191 Ind. 580, 134 N.E. 194; *Ex parte Murray,* 54 Okla. Cr. 437, 23 P. (2d) 220; *Curran v. Supreme Court,* 72 Cal. App. 258, 236 Pac. 975. See "Contempt" by Edw. M. Dangel, §208, p. 100.

*In re Oliver,* 333 U.S. 257, cited by appellant in support of his contentions (Br. p. 64), like the *Cooke* case, involved a situation in which the Court could have no knowledge that petitioner's acts were con-

[6]The Court of Appeals regarded the facts as presenting an instance of direct contempt and applied the principle of the *Maury* and *Cary* cases. However, the Supreme Court considered it to be a case of indirect contempt and subject to the statute of limitations. The Court pointed out that the question of whether summary punishment for direct contempt could be imposed "at a subsequent term, or a subsequent day of the same term," was a "problem peculiar to direct contempts in the face of the Court" 317 U.S. at p. 419.

temptuous without other testimony to show that he had given untruthful answers to certain questions. The Court there endorsed the decision of the *Terry* case as to power to punish summarily saying, p. 275:

> The narrow exception to these due process requirements includes only charges of misconduct, in open court, in the presence of the judge, which disturbs the court's business, where all the essential elements of the misconduct are under the eye of the court, are actually observed by the court, and where immediate punishment is essential to prevent "demoralization of the court's authority" before the public.

Thus the rationale of the decided cases is that jurisdiction attaches at the moment of the commission of the direct contempt and that punishment may be inflicted summarily because the Court having observed the misconduct has judicial knowledge of the fact and the circumstances surrounding it. In view of this state of things there is no necessity for a hearing to determine facts. This being so, it necessarily follows that it matters not whether the Court acts instantly or awaits a more propitious time at which to act. Where, as here, the contempt occurs during the course of a lawsuit involving the rights of parties other than the contemnor, jurisdiction continues so long as may be reasonably necessary to afford the Court an opportunity to vindicate its authority and the trial judge may in his wisdom for reasons of justice to the parties lay the matter of the contempt aside until an appropriate moment. *In re Cary,* (supra).

This action is in no way detrimental to the person who is in contempt. He is no worse off than he would be had the contempt been punished at the instant it occurred. And a cooling period having been provided, he may be in an infinitely better position. The Supreme Court has recognized that the Courts must act with caution to assure that their acts are not arbitrary or oppressive. In *Cooke v. U. S.*, supra, the Court said, p. 539:

> The power of contempt which a judge must have and exercise in protecting the due and orderly administration of justice and in maintaining the authority and dignity of the Court is most important and indispensable. *But its exercise is a delicate one and care is needed to avoid arbitrary or oppressive conclusions.* (Italics supplied)

Dealing as he was with a course of misconduct covering several days the trial judge exercised great restraint in this matter. He took to his chambers and studied the cold record until early morning. (Tr. 774.) After this period of detached study he was convinced that his earlier judgment had been correct and the very next morning advised the appellant that he was adjudged guilty of contempt. At that time he related the conduct and acts which gave rise to that adjudication.

Moreover, appellant was afforded an opportunity before sentence was imposed, to make an objection to the Court's action (Tr. 810-811) and used this opportunity to launch upon a scurrilous and vile attack upon the judge personally, charging him with being

biased, prejudiced and vindictive toward the appellant personally (Tr. 810-817, 838-847), although appellant had not seen fit to file an affidavit of bias and prejudice on behalf of his client prior to that time.

It is clear that the acts of contempt for which appellant was punished were committed in the face of the Court, were seen and heard by it, were properly certified by the judge in conformity with Rule 42(a) F.R. Crim. P. (R. 51-68), and were found by the judge to be an attempt to impair the effectiveness of the Court as an instrument of the judicial process. (Tr. 773-774.) Jurisdiction attached at the moment these acts were committed and power to punish summarily continued in the Court on November 22, 1949.

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## II.

### THE ACTIONS OF APPELLANT WERE SO REPREHENSIBLE AS TO CONSTITUTE CONTEMPT.

#### A. Appellant's misbehavior must be considered as a whole.

Appellant was judged to be in contempt because of a series of acts of misbehavior, which were so reprehensible that they were obstructing and hindering the Court in the administration of justice, and, if continued, would have been likely seriously to impair the authority of the Court and prevent the orderly administration of justice. Despite appellant's assertion that he was found to be in contempt solely on the ground that his misconduct, if continued, might disrupt the Court in the future (Br. pp. 8, 63, 65), the

Court specifically found that appellant "by his studied, persistent and inflammatory course of conduct in flouting the authority and orders of the Court has attempted to impair the effectiveness of this Court as an instrument of the judicial process. That he was wilfully attempting to evade the rulings and orders of the Court is manifest from the record of the proceedings of the trial, all of which occurred in my presence." (Tr. 773-774.)

Thus the question is not whether appellant was correct in his theory of the defense or whether the Court was correct in its various rulings pertaining to prior administrative proceedings, conspiracy to destroy Bridges, or wire-tapping incidents. It is whether the appellant embarked upon the course of conduct described by the Court.

The aggravated nature of appellant's misconduct can be appreciated only by viewing it as a whole, since each act of misbehavior was part and parcel of an overall design or scheme to thwart the Court in its judicial processes. That a contemnor's misconduct may be viewed as a unit rather than as separate isolated acts is apparent from the decision of the Supreme Court in *Clark v. U. S.*, 289 U.S. 1.[7] There the defendant was convicted of a criminal contempt to obstruct justice by knowingly giving false answers to questions affecting her qualifications as a juror. The Court

[7]Inasmuch as the false character of the answers was not a fact judicially known to the Court, the offense was tried in the manner now provided in Rule 42(b) F.R. Crim. P. and proof was had concerning falsity of the answers.

proceeded on the theory that the defendant's answers on *voir dire* examination were wilfully and corruptly false and that the effect of such misconduct was to hinder and obstruct the trial. The Court, in an unanimous opinion, said, p. 12:

> The petitioner blurs the picture when she splits her misconduct into parts, as if each were a separate wrong to be separately punished. What is punished is misconceived unless conceived of as a unit, the abuse of an official relation by concealment and deceit. Some of her acts or none of them may be punishable as crimes. The result is all one as to her responsibility here and now. She has trifled with the Court of which she was a part, and made its processes a mockery. This is contempt, whatever it may be besides.

The same theory underlies *U. S. v. Mine Workers,* 330 U.S. 258, a case involving conviction for a single contempt stemming from a continued misconduct in disobeying an order of the Court for fifteen days. See also *U. S. v. Shipp,* 203 U.S. 563, 572. The same doctrine has been adopted by the Supreme Judicial Court of Massachusetts in *Albano v. Commonwealth,* 315 Mass. 531, 535, 53 N.E. (2d) 690, 692, which involved a series of acts of misconduct in open court and *Berlandi v. Commonwealth,* 314 Mass. 424, 439-442, 445-459; 50 N.E. (2d) 210, 220-221, 228-230, which dealt with a course of misconduct in the presence of the Court but not in open court.

Nothing in the contempt statute nor in the decided cases militates against the theory adopted by the trial Court. Appellant does not appear to challenge it al-

though his argument is confined to the defending the propriety of his individual actions.

**B. This Court may rely upon the trial Court's certificate as to the description of appellant's demeanor and manner during the trial.**

In dealing with a subject such as contempt this Court is entitled to take into consideration that a printed record of the proceedings cannot convey a complete description of the courtroom atmosphere, nor of the physical actions, timing, gestures and voice inflection of appellant which are apparent not only to the Court but to the jury, counsel and spectators. These are important factors in determining the effect and intent of language and the appellate courts are entitled to rely upon the certification of the presiding judge with respect to such matters. *Fisher v. Pace,* 336 U.S. 155, 161; *U. S. v. Bollenbach,* 125 F. (2d) 458.

What has the trial judge said concerning such matters? He has certified that appellant "was not making an opening statement in any judicial sense, but was using it as a medium and sounding board for dragging in before the jury irrelevant, incompetent and inflammatory matter with the studied and avowed purpose of prejudicing the prosecution in the light of events, incidents and characters having no place in the proceeding before the jury". (Tr. 776.) This was not a characterization later indulged in by the Court to bolster its judgment, for the judge had found it necessary to so advise the appellant during the opening statement in almost the same words. (Tr. 778-779 re-

ferring to Tr. 567.) He refers to a time during the opening statement when it was necessary to tell appellant you are "creating an atmospheric quantity at this stage designed to prejudice and inflame the jury in connection with any sage, considered judgment they may have on the evidentiary matters". (Tr. 777 referring to Tr. 558.) That appellant's attitude and misbehavior was physically wearing upon the judge is apparent from the record and indicative of the atmosphere deliberately created by appellant (Tr. 789 referring to Tr. 568.) At that point the Court found it necessary to say "I admonish this jury categorically, unequivocally, with every bit of vigor I have—*which vigor is expending itself in the colloquy with you*—that you are not to read the newspapers (addressing the jury) under any conditions." At one point in the certificate the Court specifically refers to the strain in the courtroom and says "the Court's patience was being exacted". (Tr. 790.) (Italics supplied.)

As to Mr. Hallinan's behavior in cross-examining the witness Garner the Court has certified that on one point "* * * I had reached or was about to reach the extreme ends of my patience". (Tr. 799-A.) In referring to appellant's continued questioning concerning wire-tapping in violation of the Court's repeated rulings that such questions were improper the Court describes his manner of examination. "Mr. Hallinan pounding through again" (Tr. 800); "Mr. Hallinan driving through notwithstanding the objections and the rulings of the Court". (Tr. 801.) The Court stated succinctly but clearly in the certificate the reasons it

believed appellant's questioning of Garner was not in good faith and said, *"The questions, the manner, the deportment and the decorum* represented, in the opinion of the Court, a studied plan to destroy in advance the effectiveness and the asserted truthfulness of the witness placed upon the stand by the bland assertion that somewhere, sometime, he might have been associated with an alleged conspiracy, which, of course, Mr. Hallinan has referred to as somewhat fantastic". (Tr. 803.) (Italics supplied.) Again appellant's behavior is described by the man best qualified to observe impartially, "Notwithstanding that he again questioned Mr. Garner, driving him now, in the vernacular, with rights and lefts, trying to destroy him, to beat him to the ground, beat him over the head, stab him in the back". (Tr. 805-806.)[8]

These certifications of the trial judge, whose sworn duty it is to be impartial, afford an insight to the tense courtroom atmosphere, the deliberate strain upon the judge engendered by appellant's behavior and his persistent, hard driving, pounding manner in seeking to implant in the jury's mind the idea that certain facts prejudicial to the prosecution were true even though the Court had ruled those matters to be incompetent and irrelevant.

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[8]All transcript references in this and the preceding paragraph are to that part of the transcript which was incorporated into the Court's certificate by reference therein.

**C. The means by which appellant sought to frustrate the Court in its administration of justice.**

On the afternoon of November 17, 1949, the Court undertook to delimit the scope of permissible opening statement by the appellant. At that time appellant had been speaking for some time and the tenor and course of his statement had been revealed. Both appellant and opposing counsel made their views known to the Court, and the Court expressed its views to appellant. In this respect the Court ruled: (1) that the earlier deportation issues were in no wise determinative of the issue at bar (Tr. 513, 516, 531); (2) that Bridges' influence on the waterfront did not affect the ultimate issue at bar (Tr. 516); (3) that to go into the warfare on the waterfront was inflammatory and improper (Tr. 516-517); (4) that matters pertaining to waterfront problems, trade union problems, employer-employee relationships were far divorced from the indictment (Tr. 526-527); (5) that characterization of all prospective witnesses as members of a conspiracy to destroy Bridges was pure speculation and inflammatory and prejudicial. (Tr. 528-529, 534-535.)

The Court consistently adhered to the foregoing rulings and reiterated them during the following days of the trial.

Appellant's conduct on Friday, November 18, and Monday, November 22, is indicative of an intent to obstruct the Court in its administration of justice, and if permitted to continue might be reasonably expected to so undermine the authority of the Court as to make

it impossible to maintain order and direct the trial in the proper legal channels. It is not necessary for appellant's conduct to have caused a complete breakdown of the Court process at any point; it is sufficient if it had a tendency to obstruct. *Conley v. United States,* 59 F. (2d) 929 (C.A. 8); *Froelich v. United States,* 33 F. (2d) 660 (C.A. 8).

The record discloses that appellant set out to use the opening statement as a means of placing before the jury certain historical facts pertaining to the labor movement on the west coast and Hawaii, union warfare and labor troubles of the longshoremen's union, prior accusations against Bridges, previous deportation proceedings, and alleged wire-tapping activities of government agents, although the Court ruled that all those matters had no relevancy to the issue involved in the criminal case on trial. In addition appellant sought to attack the characters of persons he thought might later become witnesses and to convert the statement into an argument on behalf of his client. He adhered to this means of attack after the Court had fully explained its position on the evening of November 17. His discourse went far beyond all reasonable bounds of an opening statement and was calculated to render the jury impotent as an impartial body whose sworn duty it is to receive evidence to the bitter end with an open, unbiased mind. His reiteration of the foregoing matters despite continued objection and endless admonition by the judge constituted defiance of the rulings and authority of the Court. This conduct alone would have justified the Court to

interrupt the trial and punish appellant on Friday. See *Jones v. U. S.*, 151 F. (2d) 289, 290; (app. D.C.). See *Williams v. State,* 19 Okla. Cr. 307, 199 P. 400, 405.

The record discloses that because of that defiance the Court was unable to proceed with dignity and decorum, since it was required frequently to interrupt appellant, admonish him, and caution the jury about the matters to which he had referred. Here was a deliberate, studied disregard of the Court's rulings on the very issues involved in the case, and an attempt to prejudice the jury at the outset of the litigation. Here, as in *Pierce v. United States,* 86 F. (2d) 949, 953 (C.A. 6):

> We are not here so much concerned with improper argument springing from the heat and enthusiasm of advocacy, as we are with what appears to have been a studied effort to inject into the case irrelevant and prejudicial matter for the purpose of influencing the verdict, and its continued repetition after adverse rulings. Indulgence was designed rather than inadvertent, and an improper purpose its only explanation.

Perhaps because he had partially succeeded in his endeavor on Friday, appellant continued the same tactics on Monday with increased vigor and with bold disregard for the Court's decision as to the limits of cross-examination. He again took up his cry of the past Friday and sought to cross-examine the witness, not only about matters which the Court had consistently ruled as being immaterial and irrelevant to the issue of his client's guilt or innocence, but also

as to matters concerning which the witness could not possibly have had any personal knowledge. His questions were so framed as to give the jury the impression that certain facts existed and referred to matters not in evidence and not capable of proof under the Court's rulings on the issues. This unworthy effort to get before the jury facts which the trial Court ruled should not be received in evidence at that time was an act of insubordination and a violation of appellant's duty to behave with good fidelity to the Court. Cf. *In re Schofield,* 362 Pa. 201, 66 A (2d) 675.

Moreover, appellant continued his examination in the very teeth of the Court's rulings. Although the Court had consistently ruled that the fact of wiretapping on past occasions had no bearing on the issues involved and that cross-examination as to such episodes far removed from the period of time involved by the witness' testimony was not permissible, and had found it necessary to admonish appellant that his questions constituted an attempt to evade its ruling, appellant asked five questions in a row pertaining to such alleged activities and so worded them as to impart to the jury the idea that the episodes mentioned had actually occurred.

The continuance of a line of cross-examination after the Court has repeatedly ruled the subject matter to be improper constitutes contempt, particularly where as here, the attorney has been warned that his acts might be so judged. *In re Cary,* 165 Minn. 203, 206 N.W. 402. As was said in *State ex rel. Leftwich v. District Court,* 41 Minn. 42, 42 N.W. 598, 599:

> To permit the counsel after the court has decided that a question or a particular course of examination is improper, to persist in renewing substantially the same question, or in continuing that course would incur the danger of the trial becoming a contest of endurance between the court endeavoring to prevent a course of examination that it deemed improper and the counsel endeavoring to follow such a course, notwithstanding the ruling of the court. A counsel who would intentionally attempt such a mode of conducting a trial, especially after being warned by the court to desist, and that it would consider persistence in it a contempt, would undoubtedly be guilty of a contempt.

The foregoing language was quoted with approval by the California District Court of Appeal in a case involving this appellant. See *Ex parte Hallinan,* 126 Cal. App. 121, 14 P. (2d) 797, 801.

Similar misconduct appears with reference to appellant's repeated questioning of the witness about the previous decisions in deportation matters in which Bridges was involved and in attempting to convey to the jury the idea that all the witnesses against Bridges in those proceedings had been found to be liars and perjurers. Appellant frequently returned to these subjects despite the Court's repeated admonitions that his questions related to matters which had been held immaterial and irrelevant and amounted to an attempt to circumvent such rulings. Such attempts to evade the rulings of the Court may be punished

as contempt as appellant well knew. See *Hallinan v. Superior Court,* 74 Cal. App. 427, 240 P. 790, 791.

The facts, therefore, conclusively prove that appellant ignored the rulings of the Court with respect to the materiality of matters on which he sought to base his client's defense and refused to confine himself within the bounds of the issues in the case as defined by the Court. It amounted to a defiant attempt to substitute his own opinions for those of the judge and a deliberate effort to impose his will upon the Court. This manifestly is contempt. *In re Grossman,* 109 Cal. App. 625, 293 P. 683. Such behavior, if permitted in any court of law, can have but one result: the utter breakdown of all the processes of justice and the authority of the law,—in short a demoralization of the courts' authority. It attacks the very pillars and foundations of justice, and any Court would be derelict of its duty if it did not avail itself of its power to compel obedience to its processes. This fact was recognized by the Court of Appeals for the Second Circuit in *United States v. Bollenbach,* 125 F. (2d) 458 (C.A. 2) wherein the Court said, p. 460:

> No judge can do his duty, if his power to maintain decorum, and secure his authority from being flouted, is subject to cavil and captious question; he must be able to repress disorders quickly, and, if necessary, ruthlessly; and unless and when he does so he will be free from later question, he cannot effectively deal first hand as he must, with the lawless, the defiant, or the covertly contumacious.

Moreover, appellant's position as an officer of the Court, familiar with the requirements and duties of that office, imposed upon him an obligation at least equal to his obligation to his client to obey the mandates of the Court and uphold its dignity and authority.

> A trial counsel, however zealous in his client's behalf, has a paramount obligation to the due administration of justice. Both the court and counsel should be engaged in its due and orderly administration and in maintaining the authority and dignity of the court. Counsel should never try to injure its authority or attempt defiance thereof. *United States v. Landes,* 97 F. (2d) 378, 381 (C.A. 2).

Appellant's contentions that he was seeking to protect his client and therefore was duty bound to raise the issues upon which the Court ruled adversely, is no answer to his misbehavior. While the interests of his client may have prompted him to advance the defense which he was seeking to make, those interests did not require him endlessly to ignore the firm rulings of the Court once the matters in dispute had been decided. The interests of a client quite plainly do not include disobedience to the Court. *United States v. Landes,* 97 F. (2d) 378 (C.A. 2); *Hallinan v. Superior Court,* 74 Cal. App. 420, 427, 240 P. 788, 790 (two cases). Nor is his misconduct excusable on the theory that the Court was incorrect in its decisions. Appellant had the right to object to any adverse ruling in order to preserve it for review, and the record discloses that this was accomplished at an early hour.

Having done so, it was appellant's duty to abide by the determinations of the Court and allow the trial to proceed in an orderly and dignified manner. *State ex rel. Hurley v. District Court,* 76 Mont. 222, 246 P. 250; cf. *In re Mindes,* 88 N.J.L. 117, 95 A. 743; *In re Schofield* (supra).

The trial judge, having observed the conduct of appellant and having exhausted all reasonable means of persuading appellant to confine himself to the issues in the case as determined by the Court, is best qualified to decide whether appellant was contemptuous, and his judgment should not be overturned unless it is clear that he acted in abuse of his discretion. *Miller v. Zaharias,* 168 F. (2d) 1 (C.A. 7); *State ex rel. Leftwich v. District Court* (supra).

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## III.

### THE SUSPENSION OF APPELLANT'S RIGHT TO PRACTICE BEFORE THE DISTRICT COURT.

Although the Court in pronouncing sentence ordered appellant's name stricken from the roll of attorneys of the District Court (Tr. 848) that order was later expressly set aside at the time a stay of execution was granted (Tr. 871) and it was not included in the formal judgment signed by the Court. (R. 50.) Under these circumstances there is nothing here for this court to decide since the record does not affirmatively disclose that appellant has been barred from practice before the District Court. But see *Ex parte Tillinghast,* 4 Pet. 108, 7 L. Ed. 798.

## CONCLUSION.

To deny a trial Court sufficient flexibility of power to protect the administration of justice from appellant's odious conduct is to place the Court at the mercy of those who respect "neither the laws enacted for the vindication of public and private rights nor the officers charged with the duty of administering them". (*Ex parte Terry,* 128 U.S. 289, 313.)

We respectfully submit that the judgment of the District Court should be affirmed.

Dated, San Francisco, California,
February 24, 1950.

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